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IN THE COURT OF APPEALS OF INDIANA

PAUL M. THOMPSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 25A04-0511-CR-671
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FULTON SUPERIOR COURT
The Honorable Wayne E. Steele, Judge
Cause No. 25D01-0504-FA-105

SEPTEMBER 26, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Paul M. Thompson ("Appellant") appeals from his conviction after a jury trial of burglary, a Class A felony, Ind. Code §35-43-2-1(2)(A); and battery, a Class D felony, Ind. Code §35-42-2-1(a)(2)(B). The trial court found that appellant's conviction of residential entry, a Class D felony, Ind. Code §35-43-2-1.5 was a lesser included offense of burglary, and vacated that conviction.

Pam Gravely ("Pam") and Appellant were involved in a romantic relationship and lived together in Fulton County. Pam ended the relationship with Appellant on April 24, 2005, and left with her four children to stay at Pam's father's trailer-home where Pam's two minor sisters were also living. Pam's father was in Gary, Indiana, attending to a family emergency and had left Pam's two minor sisters in Pam's former boyfriend's care. Ultimately, Pam and her former boyfriend, Chad Dixon ("Dixon"), ended up sleeping together while at Pam's father's trailer-home.

Appellant was aware that Dixon was temporarily staying at the trailer. At approximately 11:00 p.m., Appellant kicked in the front door of the trailer. One of Pam's younger sisters, E.Q., who was in the kitchen cooking, told Appellant that he was not invited and must leave. Appellant pushed E.Q. out of the way and proceeded back to where Pam and Dixon slept. Appellant threw Dixon against a dresser and started strangling Pam.

E.Q. began hitting Appellant with a golf club in order to try to get him to stop strangling Pam. Appellant turned around and kicked E.Q. in the face, cutting her lip and causing her lip and face to swell. E.Q.'s arm also was bruised. Appellant then threatened

to kill everyone in the trailer. Another of Pam's sisters ran out the door, and called the police.

Neighbors ran to the trailer with a baseball bat of which Appellant was able to gain control. Appellant left the home and used the baseball bat to shatter the windows of Pam's minivan. Appellant then shattered the bedroom windows and screamed, "I am going to annihilate that motherf*****." Tr. 135, 139.

Appellant was told that the police were on the way. He then left the property on foot carrying a baseball bat. The police found Appellant walking near his home carrying a baseball bat. When he saw the police officers, he dropped the bat and fled. Officers soon apprehended Appellant.

Appellant was charged with burglary, a Class A felony, residential entry, a Class D felony, and battery, a Class D felony. The matter was tried to a jury on September 7, 2005. The jury returned a verdict of guilty on all counts charged. Appellant was sentenced on October 4, 2005, to a term of forty years on the burglary conviction to be served concurrently with the three-year-term for the battery conviction.

Appellant now appeals alleging that the evidence is insufficient to sustain his conviction for burglary as a Class A felony. Appellant alleges that the evidence is insufficient to support beyond a reasonable doubt that he intended to cause serious bodily injury or specifically intended to batter one of Pam's younger sisters.

In reviewing a sufficiency of the evidence claim, a court on appeal neither reweighs the evidence nor reassesses the credibility of the witnesses. *Bruno v. State*, 774 N.E.2d 880, 882 (Ind. 2002). The court looks to the evidence most favorable to the

verdict and the reasonable inferences drawn therefrom. *Id*. The conviction will be affirmed if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id*.

The State was required to prove that Appellant, who was at least eighteen years of age, touched E.Q. in a rude, insolent, or angry manner, which resulted in bodily injury to E.Q.'s face and lip, and that E.Q. was less than fourteen years of age. Ind. Code §35-42-2-1. Appellant was twenty-eight years old at the time of the offense. E.Q. was twelve years old at the time of the offense. Bodily injury is defined as any impairment of physical condition, including physical pain. Ind. Code §35-41-1-4.

In the present case, the evidence disclosed that Appellant, who was upset about his break-up with Pam, and was enraged by the fact that she had retreated to her father's trailer, where Pam's former boyfriend was caring for Pam's sisters, kicked in the front door of the trailer. E.Q., one of Pam's minor sisters, used her body to obstruct Appellant's entrance to the trailer, and passage through the trailer-home. Appellant was not invited to the trailer-home. Appellant pushed E.Q. out of his way where he proceeded to the bedroom where Pam and Dixon were sleeping. Once there, Appellant grabbed Dixon, who was sleeping, and threw him against a dresser. He then began choking Pam. E.Q. grabbed a golf club and proceeded to strike Appellant in an effort to protect her sister. Appellant then turned and kicked E.Q. in the face causing E.Q. to suffer a bloody lip, and swelling about her face and arm.

A person engages in conduct intentionally if, when he engages in the conduct, it is his conscious objective to do so. Ind. Code §35-41-2-2. Intent to commit a felony in a

burglary case may be inferred from the circumstantial evidence of the nature of the crime. *Gentry v. State*, 835 N.E.2d 569, 573 (Ind. Ct. App. 2005). Such intent may be inferred from a defendant's subsequent conduct inside the premises. *Id*. Additionally, intent may be inferred from the time, force and manner of entry where there is no evidence that the entry was made with some lawful intent. *Id*. Intent may not be inferred from mere proof of breaking and entering alone. *Id*.

In *Carter v. State*, 408 N.E.2d 790, 795 (Ind. Ct. App. 1980), a panel of this court quoted *Eby v. State*, 154 Ind. App. 509, 290 N.E.2d 89 (1972) in a footnote as follows:

> While the purpose for which an intruder has broken into the habitation of another is not presumptively established merely upon proof of breaking and entering, his unexplained entry by such means in a home in which he is a stranger is logically sufficient to sustain a reasonable inference that whatever may have been his primary intent or purpose he must have anticipated that confrontation with the home's inhabitants was not unlikely and that his presence would not be welcome. If a confrontation then occurs and he does commit an act of violence upon the person he thus confronts, the commission of the act is sufficient to justify the inference that he entered with the specific intent to do what he did, provided the occasion arose.

Here, the evidence is sufficient to sustain Appellant's conviction for Class A felony burglary. Appellant entered a trailer-home where he was not invited or welcome, by kicking in the front door, which had been locked shut, at 11:00 p.m. the day Pam had ended her relationship with Appellant. There was no evidence before the jury that Appellant had some lawful intent when he entered the premises. The time, force, and manner of entry allow the inference the jury reached that Appellant intended to cause bodily injury to E.Q. one of the inhabitants of the trailer-home who Appellant confronted.

Appellant stated in his brief that there was insufficient evidence that he intended to cause serious bodily injury to E.Q. Yet, Appellant was charged with causing bodily

injury to E.Q. Therefore, we do not address Appellant's allegation that the evidence was insufficient to establish his intent to cause serious bodily injury.

Affirmed.

BAILEY, J., and CRONE, J., concur.